

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of ) Case Nos. **03-C-04833-PEM**; 04-C-12867;  
) 04-C-14745 (Cons.)  
**BRADLEY D. BAYAN,** )  
)  
Member No. **218751,** ) **DECISION AND ORDER SEALING**  
) **DOCUMENTS**  
A Member of the State Bar. )  
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**I. Introduction**

In this consolidated conviction referral matter, respondent **Bradley D. Bayan** stipulated to three misdemeanor convictions of (1) making a harassing telephone call (Pen. Code, § 653m(a)) (two counts); (2) driving under the influence of drugs (Veh. Code, § 23152, subdivision (a)); and (3) disobeying a restraining order (Pen. Code, §166(A)(4)); and that circumstances surrounding his convictions did not involve moral turpitude.

In 2007, respondent sought to participate in the State Bar’s Lawyer Assistance Program (LAP) and State Bar Court’s Alternative Discipline Program (ADP). He has now successfully completed the ADP. (Rules Proc. of State Bar, rules 800-807.) Accordingly, respondent is hereby publicly reprovved with conditions for three years.

## **II. Significant Procedural History**

The State Bar Court Review Department referred three matters to the Hearing Department for a hearing and decision as to whether the facts and circumstances surrounding respondent's final misdemeanor convictions involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed. The referral orders were filed on:

- August 18, 2004 (case No. 03-C-04833);
- May 4, 2006 (case No. 04-C-12867); and
- April 16, 2007 (case No. 04-C-14745).

On February 5, 2007, respondent executed a Participation Agreement with the LAP.

Respondent submitted a nexus statement establishing a nexus between his substance abuse issues and his misconduct in this matter.

On August 13, 2007, the court lodged its Confidential Statement of Alternative Dispositions and Orders, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract), and the parties' Stipulation Re Facts and Conclusions of Law; and respondent's period of participation in the ADP commenced on this date.

On February 11, 2009, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program (certificate), setting forth that respondent has complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of this certificate, and that during this period, no unauthorized substances were detected.

On April 8, 2009, the court found that respondent successfully completed the ADP and ordered the stipulation lodged August 13, 2007, be filed. The court also indicated that it would issue this decision imposing the lower level of discipline reflected in its 2007 confidential statement of alternative dispositions.

### **III. Findings of Fact and Conclusions of Law**

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and filed on April 8, 2009, are attached hereto and incorporated by reference as if fully set forth herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter.

Briefly, respondent's convictions involved the following:

- In July 2003, respondent left abusive and harassing telephone messages to his sister. (Case No. 03-C-04833.)
- In May 2004, respondent was arrested for driving under the influence of drugs with one prior misdemeanor conviction. (Case No. 04-C-12867.)
- And in June 2004, respondent left a profane and harassing telephone message to a private investigator and contacted his stepmother in violation of a restraining order. (Case No. 04-C-14745.)

At the time respondent engaged in the misconduct for which he has been convicted, respondent was suffering from substance abuse issues which directly caused the misconduct in this proceeding.

In accordance with applicable Supreme Court case law, an attorney's rehabilitation from substance abuse problems can be accorded significant mitigating weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone a meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.) The court finds by clear and convincing evidence that respondent has satisfied all three conditions necessary to receive significant mitigating weight for his recovery efforts.

Respondent has been participating in the LAP since 2007 and has successfully completed the ADP. Respondent's successful completion of the ADP qualifies as clear and convincing evidence that respondent has undergone a meaningful and sustained period of rehabilitation. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,<sup>1</sup> std. 1.2(e)(iv).)

#### **IV. Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing the parties' briefs on discipline and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this conviction referral proceeding and respondent's declaration regarding the nexus between his substance abuse issues and his misconduct, the court advised the parties of the discipline that would be imposed if respondent successfully completed the ADP and the discipline that would be recommended to the Supreme Court if respondent was terminated from the ADP.

After agreeing to the recommended discipline, respondent executed the contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the order filed on April 8, 2009, the court found that respondent successfully completed the ADP.

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<sup>1</sup> Future references to standard(s) or std. are to this source.

Accordingly, the court will impose the discipline set forth in the confidential statement if respondent successfully completed the ADP.

## **V. Discipline**

### **A. Public Repeval with Conditions Attached**

Therefore, respondent **Bradley D. Bayan** is hereby publicly reprovved with the following conditions attached for three years (Rules Proc. of State Bar, rule 271):

1. During the reprovval period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
2. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
3. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the reprovval period. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the reprovval period and no later than the last day of said period;

4. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions attached to the reprobation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the reprobation period, respondent must promptly meet with the probation deputy as directed and upon request;
5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these reprobation conditions;
6. Within one year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015-2299, and passage of the test given at the end of that session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education Requirement (MCLE), and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201);
7. Unless respondent has been terminated from the Lawyer Assistance Program (LAP) prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of

respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition;

8. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
9. Respondent must abstain from use of any alcoholic beverages, and must not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription; and
10. These conditions attached to the reprobation will commence when this decision becomes final. (Rules Proc. of State Bar, rule 270.)

**B. Multistate Professional Responsibility Exam**

Respondent must take and pass the Multistate Professional Responsibility Examination within one year. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

**C. Costs**

Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **VI. Order Sealing Documents**

The court orders this Order Sealing Documents be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: July \_\_\_\_\_, 2009

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**PAT McELROY**  
Judge of the State Bar Court